IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 14TH DECEMBER, 2007 / 23RD AGRAHAYANA, 1929

FAO.No. 244 of 2004

(AGAINST THE ORDER DATED 03/04/2000 IN IA 789/98 IN OS.98/1994 of SUB COURT,THODUPUZHA)

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APPELLANT:

THRESSIAMMA, W/O.CHANDY, AGED 40 YEARS,
CHAMBAPPALLIL HOUSE, VELLAYAMKUDI P.O.,
KATTAPPANA, IDUKKI DISTRICT.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS:
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1. M/S.BISHOP VAYALIL MEDICAL CENTRE,
MOOLAMATTOM, IDUKKI DISTRICT,
KERALA STATE.

2. DR.MARYKUTTY ILLICKAL, M.D.,F.A,GO,
OBSTETRICIAN AND GYNAECOLOGIST, BISHOP
VAYALIL MEDICAL CENTRE, MOOLAMATTOM,
IDUKKI DISTRICT.

3. DR.MAMMEN EASAW, M.B.B.S., DA,
CONSULTANT ANESTHESIOLOGIST, BISHOP VALAYIL
MEDICAL CENTRE, MOOLAMATTOM, IDUKKI DISTRICT.

4. M/S.MEDICAL TRUST HOSPITAL,
NEDUMKANDOM, IDUKKI DISTRICT.

5. DR.THOMAS THARIYAN, B.SC, M.B.B.S., MD,
PHYSICIAN AND CARDIOLOGIST,
MEDICAL TRUST HOSPITAL, NEDUMKANDOM,
IDUKKI DISTRICT.

6. M/S.LISIE HOSPITAL, ERNAKULAM, COCHIN-18

7. DR.ABRAHAM KURIAN, M.D., D.M.,
NEUROLOGIST, DEEPARTMENT OF NEUROLOGY,
LISIE HOSPITAL, COCHIN-18.

BY ADV. SRI.JIMMY JOHN VELLANIKARAN
SRI.JOSEPH SEBASTIAN PURAYIDAM

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON 14/12/2007 DELIVERED THE FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

F.A.O.No. 244 of 2004
& C.M.Appl.No.1383 of 2004

Dated this the 14th day of December, 2007

J U D G M E N T

Mohanan,J:

The appellant herein is the plaintiff in O.S.No.98 of 1994 on the file of the Sub Court, Thodupuzha. Initially, it was filed as an indigent Original Petition (No.6 of 1993) which was allowed and renumbered as O.S.No.98 of 1994. By order dated 21.7.1998, the court below had dismissed the above suit for default. Subsequently, I.A.No.790 of 1998 was filed under Order IX Rule 9 of the Code of Civil Procedure to restore the suit and since there was delay of 91 days for filing the petition for restoration, I.A.No.789 of 1998 was also filed for condonation of delay. But, the court below, by a common order dated 3.4.2000 in both I.A.Nos.789 & 790 of 1998, dismissed the above petitions. Challenging the above common order, the present appeal is preferred by the appellant/plaintiff. Since the appeal is filed belatedly, a petition, i.e., C.M.Appl.No.1383 of 2004 has

also been filed to condone the delay occurred in filing the appeal.

2. The case of the appellant is that the appellant/plaintiff was admitted in the first respondent's hospital on 13.5.1992 due to abdominal pain and she was attended by the second respondent. According to the second respondent- doctor, the appellant had infection and complication in the uterus and therefore, the doctor advised the appellant/plaintiff to remove the uterus. On 19.5.1992, after administering Anaesthesia on the appellant by the third respondent, the second respondent conducted surgery on the plaintiff and removed her uterus. It is alleged that after surgery, the appellant/plaintiff had to bear excruciating pain resulting from infection caused on the surgical wound. According to the appellant/plaintiff, this was due to the negligent act and conduct of the second and third respondents without proper treatment coupled with the use of unhygienic equipment for surgical operation. It is stated that before complete healing of the surgical

wound, the plaintiff was discharged from the hospital on 20.6.1992. It is also alleged that in the mean while, the plaintiff was also subjected to another surgery and she became very weak. Thereafter also she was suffering from pain, vomiting and bodily disorders. Since her condition got worsened, according to the appellant/plaintiff, she was again admitted to the fourth respondent hospital on 20.7.1992. The complaint of the appellant/plaintiff continues because there also she did not get proper and effective treatment and her physical condition became much worse, but the hospital authorities discharged her on 22.7.1992. So she was taken to the sixth respondent hospital on the very same day and was admitted there as an inpatient. According to the appellant/plaintiff, though she was in a critical condition, the seventh respondent attended the appellant/plaintiff only on 25.7.1992 though she was admitted on 22.7.1992. In the seventh respondent hospital, she was retained till 17.10.1992, but according to the appellant/plaintiff, there was no proper treatment

on those days also. The appellant further states that though the condition of the appellant/plaintiff was much worse than while she was admitted, she has been discharged from the above hospital also. Thus, according to the appellant/plaintiff, as the result of culpable negligence and irresponsible conduct of the respondents, the appellant's both lower limbs were paralyzed and thereafter, she is confined to bed without even able to move by herself. She is now not even able to stand without the support of others. Thus, on the above allegations, the suit was filed seeking damages from the respondents/defendants on the ground of negligence on their part in taking proper care while conducting surgery on the plaintiff and in treating her.

3. Before filing the suit, a lawyer notice was caused to send through Advocate Mr.Sebastian Champapilly, a close relative of the husband of the appellant/plaintiff. Finally, the above suit was filed through Advocate Sri.K.J.George who was arranged by the said Advocate Mr.Sebastian Champapilly.

4. It is the further case of the appellant/plaintiff that Advocate Mr.Sebastian Champapilly advised the appellant's husband to make arrangement for engaging an Advocate from Thodupuzha in the trial court as the said Advocate has confined his practice to Ernakulam. Thus, the appellant's husband engaged Advocate Mr.C.K.Vidya Sagar from Thodupuzha to appear and conduct the case on behalf of the appellant/plaintiff and the said Advocate has filed a vakalath on 8.6.1995. Since the service of summons on the seventh defendant was not completed, an application was filed with a draft of publication so as to complete the service by way of substitute service and the said petition was posted on 11.4.1997. According to the appellant/plaintiff, the suit was called on 2.4.1998 and posted to 10.9.1998, noting that the same was not in the list. It is the specific case of the appellant/plaintiff that on 10.9.1998, the lawyers representing the parties to the suit were present in the court, but the case was not called on that day. According to the appellant, when the lawyer of the

appellant conducted an enquiry, it was revealed that the court had included the case in the special list on 21.7.1998 and the case was taken for consideration on that day and the suit was dismissed for default for non-appearance of the appellant/plaintiff. It is also stated by the appellant/plaintiff that on subsequent verification, it was revealed that the case was included in the special list on 21.7.1998 and in the said list, the name of the the appellant/plaintiff's counsel was not shown and therefore, the clerk of the appellant/plaintiff's counsel overlooked the posting of the case and therefore, not because of the fault of the appellant/plaintiff or her counsel, they could not attend the court on 21.7.1998 on which date the case was included in the special list, in spite of the posting on 10.9.1998 and dismissed the suit for default.

5. The appellant/plaintiff has specifically stated that on coming to know the dismissal of the suit for default, her counsel informed the above fact and advised her to take further steps in the matter. But, according

to the appellant, at that time, she was laid up due to viral fever and she could not contact her counsel in time and no steps could be taken on those days. But subsequently, I.A.No.790 of 1998 was filed under Order IX Rule 9 of the Code of Civil Procedure to restore the suit and since there was delay of 91 days in filing the restoration application, another I.A.No.789 of 1998 was filed under Section 5 of the Limitation Act to condone the delay in preferring the restoration application. But, according to the appellant/plaintiff, without appreciating the facts and circumstances involved in the case and on flimsy grounds, the court below had dismissed those applications, as per Annexure-I, the impugned order.

6. It is the further case of the appellant that her lawyer at Thodupuzha expressed his opinion that Annexure-I order of the court below is illegal and if she challenges the order before this Court, this Court will definitely interfere with the matter and therefore, he advised her to file an appeal before this Court. Accordingly, the appellant's husband took back the

papers related to the above case and entrusted the same with Advocate Mr.Sebastian Chempapally (earlier mentioned counsel) for filing the appeal before this Court and the appellant's husband signed the vakalath and necessary papers for filing the appeal against the above order. According to the appellant/plaintiff, the said lawyer assured the appellant's husband that he will take all necessary steps for filing the appeal and the appellant's husband entrusted the matter with the said lawyer who is none other than his first cousin and who has full knowledge about the background of the case and the sympathetic condition of the appellant.

7. Thus the above appeal is filed with a prayer to set aside Annexure-I order and for a direction directing the court below to restore the suit back to its file and to proceed with the suit in accordance with law. In this appeal, several factual and legal grounds are taken in support of the prayer to set aside Annexure-I order. It is averred that there was no wilful laches or negligence on the part of the appellant/plaintiff or her counsel in

appearing before the court below on 21.7.1998, the date on which the suit was dismissed for default. According to the appellant, without due notice to counsel for the appellant/plaintiff, the case was pre-poned and included in the special list on 21.7.1998, though initially the case was posted on 10.9.1998. It is stated by the appellant/plaintiff that the reasons given by the court below for dismissing the petition for condonation of delay and restoration application are flimsy and unsustainable. It is specifically stated that while the list was published, the name of the then Advocate of the appellant/plaintiff, namely Mr.C.K.Vidya Sagar was not mentioned and instead of that, the earlier counsel's name was shown and because of this confusion, the Clerk of Advocate Mr.C.K.Vidya Sagar could not realise and identify the posting of the case on 21.7.1998. It is also sated that there are only 91 days' delay in filing the restoration application and such delay was occurred due to the fact that the appellant was laid up due to viral fever. Thus, according to the appellant, it was a fit case

for the court below to condone the delay and to restore the suit on file and proceed in accordance with law and to take a decision on merit. Therefore, very much aggrieved by Annexure-I order, the above appeal is preferred.

8. But the appeal is filed belatedly and there is inordinate delay of 1507 days in filing the appeal. Therefore, along with the present appeal, an application for condonation of delay has been filed. In the affidavit in support of the petition for condonation of delay, after having stated the factual circumstances leading to the filing of the suit and the subsequent development leading to the passing of Annexure-I order, the appellant/plaintiff had elaborated the reason for the delay occurred in filing the appeal before this Court. It is stated that against the dismissal of the suit on 21.7.1998, though a petition to restore the suit as well as a petition for condonation of delay were filed on 21.10.1998, those petitions were dismissed only on 3.4.2000, and hence, there was considerable delay in

passing Annexure-I order. After the dismissal of the petition, the counsel for the appellant/plaintiff opined that it is a good case to be taken before this Court and there is every possibility of interference by this Court favourably and the order of the court below is likely to be set aside. On such advice, according to the appellant, the back papers relating to the above case were taken from her counsel at Thodupuzha and entrusted it with Advocate Mr.Sebastian Champapilly who issued the lawyer notice initially and who took all preparatory steps for filing the suit. As pointed out earlier, according to the appellant, the said Advocate is a close relative of her husband and who was fully aware of the entire factual background of the case and the pathetic condition of the appellant. According to the appellant, she was under the impression that the said lawyer would have taken all steps and proceed with the matter and do everything for filing the appeal and because of full faith on the lawyer, no enquiry was conducted. But, even after the expiry of four years, nothing was heard from the counsel. The

appellant/plaintiff thought that the delay was quite usual as in all civil cases and she was under the bona fide belief that it would take its own time. That being the position, the appellant's elder son got mentally deranged and he was admitted to S.H.Hospital, Thodupuzha from February 2000 onwards as an inpatient for two years for mental treatment. It is further stated in the affidavit that since the appellant/plaintiff -the mother, was totally paralyzed, there was no one else to look after their elder son other than the father, who is the deponent in the petition for condonation of delay as the appeal is filed by him, being the power of attorney of the appellant/plaintiff. Therefore, the deponent could not contact the Advocate and enquire about the case. It is further stated that during the first week of July 2004, he had contacted Advocate Mr.Sebastian Champappilly over phone and on enquiry, it was revealed to his utter dismay that no appeal was filed as there was no legal ground for filing the appeal. According to the deponent, the above reply

was very painful and he discussed the matter with Advocate Mr.Sabu Sebastian, who is an Advocate practising at Calicut and the son of the appellant/plaintiff's sister. According to the said counsel, normally the appeal would have been entertained by this Court and he agreed to make arrangements for getting back the papers from Advocate Mr.Sebastian Champappilly and accordingly, he had contacted with Mr.M.R.Anison, an Advocate from Ernakulam for collecting the papers from Advocate Mr.Sebastian Champappilly. The appellant's husband also telephoned Mr.Sebastian Champappilly to hand over the papers to Mr.Anison. Thus the file was handed over to Mr.Anison on 17.7.2004 who sent the file to Mr.Sabu Sebastian through another Advocate Mr.Geoffrey G.Joseph. Thus Mr.Sabu Sebastian thereafter made arrangements to file the appeal before this Court. Along with the affidavit, Annexure-2 letter dated 17.7.2004 has been produced to show that the file is received back belatedly. Thus, under the above

circumstances, it is stated that there is no wilful delay or laches on the part of the appellant/plaintiff in filing the appeal in time, but the delay was occurred for the reasons mentioned above. It is also stated in para 9 of the affidavit that negligent and irresponsible conduct of the defendants have resulted in total break down of the nervous system of the appellant causing total permanent disability of both lower limbs of the appellant/plaintiff and she cannot move even for urinating and an artificial tube is inserted for the discharge of urine. The lower limbs of the appellant/plaintiff are completely paralyzed and she is permanently disabled and substantial amount has already been spent for her treatment. It is also stated that the suit for compensation for the wrong committed by the respondents has been dismissed for no fault of the appellant/plaintiff and therefore, it is prayed that the delay may be condoned.

9. Countenancing the averments contained in the affidavit in support of the petition for condonation of delay, the first and sixth respondents have filed separate

counter affidavits. In support of Annexure-I order, the respondents stated that there was delay of 91 days which was not properly explained. It is also stated that the details regarding the entrustment of the matter with Advocate Mr.Sebastian Champapally are not given. It is also stated that there was negligence on the part of the appellant/plaintiff in contacting her Advocates and the appellant/plaintiff miserably failed to explain the inordinate delay of 1507 days.

10. The sixth respondent, in the counter affidavit stated that an affidavit in support of the delay petition is filed by the husband of the appellant and the appellant has no direct knowledge regarding the factual circumstances involved in the case. It is stated that the appellant/plaintiff has not produced any document before the court below to show that she was suffering from viral fever and no reason was given to condone the delay in filing the petition for restoration of the suit. It is also stated that the details regarding the entrustment of files with Mr.Sebastian Champapally and the enquiry,

if any, conducted etc. has not been stated in the affidavit. It is also stated that the conduct of the appellant/plaintiff is quite strange since she did not make any enquiry about the case for more than four years after the entrustment of the file with Advocate Mr.Sebastian Champappilly for filing appeal before this Court. Therefore, according to the sixth respondent, the conduct of the appellant/plaintiff is doubtful and she is not diligent in prosecuting the appeal. Regarding the mental treatment given to the elder son of the appellant/plaintiff, it is stated in the counter affidavit that no documents are produced to substantiate the same and it is also stated that even if the son is hospitalised for mental treatment, that was not a bar for contacting the concerned counsel and for enquiring about the progress of the appeal. So regarding those aspects, the affidavit keeps silent and hence, according to the respondents, the delay has not been explained.

11. After filing of the counter affidavit by the respondents, the appellant/plaintiff had filed

I.A.No.3831 of 2007 with a direction to receive certain documents produced along with the petition to convince this Court about the treatment given to the elder son of the appellant/plaintiff. On the basis of the documents produced in the above petition, the appellant/plaintiff says that the delay was genuine and there was no wilful laches in filing the appeal in time.

12. We have heard learned counsel for the appellant/plaintiff as well as the respondents elaborately.

13. The counsel for the appellant strenuously pointed out that the court below ought to have allowed the restoration petition as well as the petition to condone the delay as the default was occurred due to the pre-ponement of the case at the instance of the court without proper and timely notice to the appellant/plaintiff. In order to substantiate the above contention, it is pointed out that an application for substitute service was filed and though no order was passed on such application, the case stood for

consideration on 11.4.1997 on which date the case was adjourned to 10.9.1998 and without proper notice to the parties concerned, the case was pre-poned and included in the special list on 21.7.1998 on which date neither the appellant/plaintiff nor her counsel could attend the court. It is also pointed out by the counsel that in the list, the name of the counsel for the appellant/plaintiff who was conducting the case at that time was not mentioned though the number of the suit is shown. Therefore, counsel for the appellant/plaintiff very much argued that the trial court ought to have allowed the delay petition and the petition for restoration of the suit. In fact the delay was only for 91 days and it was properly explained, according to the appellant/plaintiff. But the court below dismissed both the applications on flimsy and unsustainable grounds.

14. The counsel for the appellant/plaintiff further submits that after getting the certified copy of the impugned order, steps were taken to file an appeal before this Court. But according to the appellant,

Advocate Mr.Sebastian Champapilly, who is a close relative of the appellant's husband and who has full knowledge about the background and the sympathetic condition of the appellant, did not take steps for filing the appeal in time and the appellant/plaintiff did not conduct any enquiry, placing much faith and belief on the counsel and only after the expiry of four years, the appellant/plaintiff came to know regarding the non-filing of the appeal. As stated earlier, as per Annexure-2 letter dated 17.7.2004, it can be seen that the file was received back belatedly from Advocate Mr.Sebastian Chemapappilly and forwarded to Advocate Mr.Sabu Sebastian through Advocate Mr.Geoffrey.G.Joseph. Thus, according to the appellant, appellant had taken all steps to file the appeal in time, but the same was not filed by the Advocate to whom the matter was entrusted. Apart from the above reason, another explanation given by the appellant is that her elder son had mentally shocked resulting from the sad plight of the appellant and he mentally deranged and he was admitted to

S.H.Hospital, Thodupuzh from February 2000 onwards as an inpatient for two years. Since the appellant/plaintiff's two legs were paralyzed due to the negligence of the respondents, she could not attend the affairs of the elder son and it was only her husband, the deponent who sworn to the affidavit in support of the delay petition, looked after her son and therefore, he was also not in a position to enquire about the subsequent development of the case after its entrustment with the said Advocate for filing appeal in this Court. Thus, according to the appellant, the delay was occurred for the above reasons. Counsel for the appellant/plaintiff very much submitted that the treatment for the elder son of the appellant and the delay in filing the appeal before this Court etc. happened after obtaining the copy of the impugned order from the court below and if the court below had allowed their petitions, the subsequent developments could not have happened and affected the case as such. Therefore, the counsel for the appellant/plaintiff prays

that the delay petition as well as the appeal may be allowed.

15. Per contra, the counsel appearing for respondents 1 and 6 very much resisted the prayer of the appellant/plaintiff and her counsel. They have vehemently opposed the application for condonation of delay and the appeal and further submits that the appellant/plaintiff miserably failed to explain the delay in filing the appeal before this Court as well as the delay occurred in filing the petition for restoration of the suit before the court below. It is submitted by the counsel that no enquiry was conducted by the appellant or her husband after entrustment of the case with Advocate Mr.Sebastian Champappilly and no satisfactory explanation is forthcoming about this. Regarding the impugned order, it is argued that no proper explanation was forthcoming for explaining the delay of 91 days and it is also submitted that no grounds are made out to set aside the dismissal order and restoration of the suit. According to counsel, no medical certificate is produced

before the court below to substantiate the contention that she was laid up with viral fever during the relevant time. Thus, according to the counsel, due to lack of satisfactory and cogent explanation from the appellant/plaintiff, the delay petition deserves no consideration and consequently, the appeal is liable to be dismissed.

16. From the materials available on record and according to the arguments of the appellant/plaintiff, it appears that the cause of action alleged arose out of the medical negligence connected with treatment alleged to have given to the appellant by the respondents. According to her, the negligent and irresponsible conduct of the respondents have resulted in total break down of her nervous system causing total permanent disability of both her lower limbs and she is unable to do her daily needs without the help of others. In fact, the suit was initially stood posted on 10.9.1998, but without proper notice to the parties concerned, the case was pre-poned and included in the special list on 21.7.1998,

on which date neither the appellant/plaintiff nor her counsel could attend the court. Though the suit number is shown in the list published by the court below, the name of the counsel for the appellant/plaintiff who was conducting the case at that time was not mentioned, as a result of which the Clerk of the said Advocate overlooked to note down the case due to oversight. Therefore, neither the counsel for the appellant/plaintiff nor his clerk can be blamed, but the court below ought to have taken note of the fact that the advanced posting of the case and also non-mentioning of the name of the then counsel for the plaintiff might have resulted in overlooking to note down the posting of the case and thus the court below ought to have considered the petition in favour of the appellant/plaintiff.

17. Considering the factual situation involved in the case, we are of the opinion that the court below ought to have allowed the petition for condonation of delay of 91 days and thereby restored the suit on file and given a quietus of the matter on merit. Time and

again, the Apex Court had held and was of the view that in the matter of condonation of delay, the courts have to take a liberal approach. In the decision reported in **State of Nagaland** v. **Lipok Ao and Others** [(2005) 3 SCC 752], the Apex Court had held that Section 5 of the Limitation Act has to be considered liberally. In the decision reported in **N.Balakrishnan** v. **M.Krishnamurthy** [(1998) 7 SCC 123], the Supreme Court had held that the primary duty of the court is adjudication and the rules of limitation are not to destroy the right of parties. It was also held that acceptability of explanation for the delay is the sole criterion and the length of delay is not much relevant. Considering the overall factual situation involved in the case, we are of the opinion that the court below ought to have allowed the prayer to restore the suit after condoning the delay.

18. It is true that there is a delay of 1507 days in filing the appeal. Along with the appeal memorandum, a petition under Section 5 of the Limitation Act has

already been filed to condone the delay and in support of above delay condonation petition, an affidavit has been filed by the husband of the appellant/plaintiff who is her Power of Attorney Holder. In the affidavit, he had elaborately stated all the facts, including the abdominal pain of the appellant and the treatment given to her as an inpatient in the first respondent's hospital. The improper and negligent treatment given to the appellant and the pain and hardship suffered by the appellant/plaintiff while she was undergoing treatment under the respondents are also explained. It is also specifically stated in the affidavit about the alleged unfaith attitude shown by her counsel Mr.Sebastian Chempappilly who sent the lawyer notice initially to respondents and is aware of the facts and pathetic situation of the appellant. It is also relevant to note that according to the deponent, the said Advocate is his first cousin. Therefore, according to the deponent, after entrustment of the files with the said counsel, placing full faith and belief on him, no enquiry was conducted

and also they were under the impression that time will be taken to reach their turn even after filing the cases before this Court.

19. It is also pointed out that in the mean while, the elder son of the deponent and the appellant was admitted in the S.H.Hospital for mental treatment and he had undergone treatment there as an inpatient for two years from February 2000 onwards. As the appellant was laid up as her both lower limbs were paralyzed, it was only the deponent to look after the affairs of the elder son who was admitted in the above hospital and according to the deponent, it was another reason which prevented them to contact and enquire with the Advocate Mr.Sebastian Chempappilly about the case. The further details given in the affidavit appear to be genuine and all these circumstances resulted in accruing the delay.

20. It is pertinent to note that the suit was initially filed as an indigent petition claiming damages for the medical negligence due to the improper

treatment given to the appellant and for the mis-conduct of the respondents as a result of which the appellant's both the lower limbs were paralyzed. Taking note of all facts and circumstances of the case, the court below ought to have allowed the application for restoration of suit after condoning the delay of 91 days and had it been allowed, there is no likelihood of filing the present appeal and also the subsequent developments which resulted in accruing the delay in filing the appeal.

21. In the light of the above decision of the Apex Court and considering the particular facts and circumstances involved in the case, though it cannot be said that the delay is explained to the utmost satisfaction, we are inclined to condone the delay of 1507 days in filing the above appeal taking a lenient view. Since the length of delay is comparatively long, naturally the question of awarding cost will arise while allowing the delay petition. But considering the fact that the suit itself was filed as an indigent one and the appellant's both lower limbs are paralyzed because of

the alleged negligence of the respondents and her elder son is suffering from mental complaint who had undergone treatment as an inpatient in a mental hospital, we feel that it will be unjust in directing the appellant to pay cost for condoning the delay.

22. In the light of what is discussed as above, we condone the delay of 1507 days in filing the above appeal and allow this appeal setting aside Annexure-I order of the court below. The court below is directed to restore the suit on file and to proceed with the same in accordance with law and to dispose of the same preferably, within four months from the date of appearance of the parties before the court below. The parties are directed to appear before the court below on 3.1.2008.

The delay condonation petition and the appeal are allowed.

P.R.RAMAN, Judge

Mbs/ **V.K.MOHANAN,Judge**

V.K.MOHANAN, J.

O.P.NO. OF 2001

J U D G M E N T

DATED: -0-2007